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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIFTH APPELLATE DISTRICT**

CATALINA W.,

Petitioner,

v.

THE SUPERIOR COURT OF MADERA
COUNTY,

Respondent;

MADERA COUNTY DEPARTMENT OF
SOCIAL SERVICES/CHILD WELFARE
SERVICES,

Real Party in Interest.

F071030

(Super. Ct. No. MJP017277)

OPINION

THE COURT*

ORIGINAL PROCEEDING; petition for extraordinary writ review. Thomas L. Bender, Judge.

Lusine M. Vardanova, for Petitioner.

No appearance for Respondent.

No appearance for Real Party in Interest.

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* Before Detjen, Acting P.J., Franson, J. and Peña, J.

Catalina W. seeks extraordinary writ review (Welf. & Inst. Code, § 366.26, subd. (l); Cal. Rules of Court, rule 8.452)¹ of the juvenile court's orders made at the 12-month review hearing (§ 366.21, subd. (f)), terminating reunification services and setting a section 366.26 hearing to consider a permanent plan for her 16-month-old daughter Barbara. Catalina contends substantial evidence does not support the juvenile court's finding that she received reasonable reunification services. She further contends the juvenile court violated her due process rights by failing to advise her and obtain her express waiver of her trial rights at the jurisdictional hearing. We conclude Catalina forfeited both claims by failing to timely assert them and deny the petition.

PROCEDURAL AND FACTUAL SUMMARY

Dependency proceedings were initiated in December 2013, when the Madera County Department of Social Services (department) placed a protective hold on newborn Barbara because her mother, Catalina, appeared incapable of holding, feeding, and changing Barbara and was not bonding with her, and because Barbara's father, Jose, used methamphetamine. The department filed a dependency petition alleging Catalina's developmental delays and cognitive deficiencies and Jose's methamphetamine use placed Barbara at a substantial risk of harm. (§ 300, subd. (b) (failure to protect).)

The juvenile court ordered Barbara detained pursuant to the petition and the department placed her with her maternal uncle and his wife.

In January 2014, Catalina and Jose appeared at an uncontested jurisdictional hearing represented by counsel, who submitted on the department's report. The juvenile court sustained the allegations in the petition and adjudged Barbara a dependent child.

In February 2014, at the dispositional hearing, the juvenile court ordered a plan of reunification that required Catalina and Jose to attend parenting classes offered through

¹ All statutory references are to the Welfare and Institutions Code; all rule references are to the California Rules of Court.

the Doors of Hope Pregnancy Care Center (Doors of Hope) to learn how to care for Barbara. It also required Catalina to be evaluated for counseling and services at the Central Valley Regional Center (CVRC) and Jose to participate in substance abuse services. Several days after the hearing, Catalina enrolled in First Parents Program, which provided one-on-one parenting instruction under the guidance of a case manager until the child's first birthday.

Over the ensuing six months, Catalina and Jose made little to no progress. Jose was dropped from a drug and alcohol counseling program for poor attendance and tested positive for methamphetamine as late as July 2014. Catalina was dropped from Doors of Hope for lack of attendance and still struggled to safely handle and care for Barbara. In addition, she had not been evaluated for CVRC services. Barbara, meanwhile, was participating in the Healthy Beginnings Program for developmental assessment and services. She was making good progress and had not manifested any developmental delays.

In its report for the six-month review hearing, the department recommended the juvenile court terminate Catalina and Jose's reunification services. The department opined that Barbara would not be safe if returned to Catalina and Jose's care and that there was not a substantial probability she would be after another six months of services.

Catalina and Jose challenged the department's recommendation and in September 2014, at the six-month review hearing, testified they were unable to comply with their case plan in large part because they lacked transportation. They said they requested assistance from the department but did not receive any. The juvenile court found them persuasive and declined to follow the department's recommendation. Instead, the juvenile court ordered the department to revise their services plan to include more "hands-on" assistance and continued services to the 12-month review hearing. The court also continued the six-month review hearing for two weeks for the purpose of approving a new plan.

In the interim, Catalina completed a psychological evaluation through CVRC and was diagnosed with borderline intellectual functioning but did not qualify for CVRC services. Dr. Sharp of CVRC explained that Catalina functioned at the level of an 11- to 14-year-old child and that her generalized slowness impeded her anticipation and reaction times, which could interfere with her ability to care for an infant.

In late October 2014, after several continuances and discussions, the department presented a revised services plan, which the juvenile court approved. One of the concerns raised during those discussions was that Catalina would not receive any support through First Parents Program after Barbara's first birthday in December 2014. Consequently, the juvenile court ordered the department to determine whether the Healthy Beginnings Program offered any services that would benefit Catalina. The revised services plan incorporated parenting services from Doors of Hope, First Parents Program and Healthy Beginnings. Specifically, as to Healthy Beginnings, the revised plan required Catalina to participate in 10 weekly one-on-one parenting classes beginning in January 2015. The court set the 12-month review hearing for January 12, 2015.

By the 12-month review hearing, Catalina had completed the Doors of Hope and First Parents Program but was unable to retain the information presented and apply it. In addition, she did not recognize Barbara's cues for hunger or other basic needs and relied on Jose to prompt her and assist her in caring for Barbara. For his part, Jose was better able to meet Barbara's needs but he continued to use methamphetamine. He did not believe he had a drug problem but said he would quit using drugs if Barbara was returned to his care. Catalina believed she was fully capable of caring for Barbara without any help.

In its report for the 12-month review hearing, the department recommended the juvenile court terminate Catalina and Jose's reunification services and set a section 366.26 hearing. The juvenile court set a contested hearing on the matter, which was conducted over several sessions in January and February 2015.

Social worker Maria Maravilla testified that Catalina had not demonstrated the ability to care for Barbara and she did not believe there were any services not already offered that would assist her. Catalina's attorney asked Maravilla why the department did not provide the one-on-one parenting classes through Healthy Beginnings as required by the case plan. Maravilla explained that the Healthy Beginnings classes were intended to continue parenting classes for Catalina when the First Parents Program classes ended in December. She said the classes would be similar to the ones she was already provided.

At the conclusion of the hearing, the juvenile court found that it would be detrimental to return Barbara to Catalina and Jose's care. It also found they were provided reasonable services and regularly participated but made moderate and minimal progress, respectively. The court found there was not a substantial probability Barbara could be returned to their care if reunification services were continued, terminated reunification services, and set a section 366.26 hearing.

This petition ensued.²

DISCUSSION

Due Process and Rule 5.682

Catalina contends the juvenile court violated her due process rights by failing to advise her of her rights under rule 5.682 and obtain her personal waiver of those rights. We disagree.

At a jurisdictional proceeding, "the court must advise the parents of their due process rights to a hearing and must obtain an express personal waiver of those rights if the hearing is to proceed without further evidence." (*In re Monique T.* (1992) 2 Cal.App.4th 1372, 1374.) To that end, rule 5.682 requires the juvenile court to advise a parent of the following rights: the right to a hearing on the issues raised in the petition, the right to assert any privilege against self-incrimination, the right to confront and cross-

² Jose did not file a writ petition.

examine witnesses and the right to use the process of the court to compel attendance of witnesses (hereafter “trial rights”). (Rule 5.682(b)(1)-(4).)

Once advised of these trial rights, the parent has the option to “submit the jurisdictional determination to the court based on the information provided to the court and waive further jurisdictional hearing.” (Rule 5.682(e).) After such a submission, the court must find that the parent knowingly and intelligently waived these trial rights, understands the possible consequences of a submission and entered the submission freely and voluntarily. (Rule 5.682(f)(3)-(5).)

Catalina correctly points out that the juvenile court failed to advise her of her trial rights under rule 5.682 and that she did not personally waive them. The reporter’s transcript for the jurisdictional hearing reflects that the juvenile court explained the allegations in the petition to Catalina and Jose and asked if they understood them. They said they did and their attorneys submitted on the jurisdictional report. No mention was made of Catalina’s trial rights. We conclude, however, that Catalina forfeited the issue by failing to raise it on appeal from the dispositional orders.

Under the forfeiture rule, “an unappealed disposition or postdisposition order is final and binding and may not be attacked on an appeal from a later appealable order.” (*In re Meranda P.* (1997) 56 Cal.App.4th 1143, 1150 (*Meranda P.*)).³ The purpose of the rule is to balance the parents’ interest in the care and custody of their children with the children’s interest in expeditious resolution of their custody status. (*In re M.F.* (2008) 161 Cal.App.4th 673, 681 (*M.F.*)).

³ Though referred to as the “waiver [rule],” the “correct legal term for the loss of a right based on failure to timely assert it is ‘forfeiture,’ because a person who fails to preserve a claim forfeits that claim. In contrast, a waiver is the “intentional relinquishment or abandonment of a known right.”” (*In re S.B.* (2004) 32 Cal.4th 1287, 1293, fn. 2.)

Generally, the forfeiture rule does not infringe upon a parent's due process rights because of the numerous safeguards built into the dependency system. (*M.F.*, *supra*, 161 Cal.App.4th at p. 682.) However, the forfeiture rule will not be applied if "due process forbids it." (*In re Janee J.* (1999) 74 Cal.App.4th 198, 208.) Applying the forfeiture rule would be inappropriate when an error so "fundamentally undermined the statutory scheme" that the parent was prevented from availing him or herself of its protections. (*Ibid.*)

With regard to Catalina's claim that the juvenile court failed to advise her of her trial rights, we note that Catalina was represented by counsel at all stages of these proceedings. In addition, the juvenile court explained the allegations to Catalina at the jurisdictional hearing and she acknowledged her understanding of them. The fact that the juvenile court did not also advise Catalina of her trial rights though error does not in our view constitute a violation so serious as to deprive Catalina of the protections afforded by the dependency statutory scheme as a whole and she fails to demonstrate otherwise. Thus, we conclude she forfeited the issue by failing to appeal from the dispositional order.

Further, notwithstanding the fact that Catalina forfeited the advisement issue, she cannot show she was prejudiced by the juvenile court's failure to advise her of her trial rights. (*Monique T.*, *supra*, 2 Cal.App.4th at p. 1377 [failure to obtain express personal waiver is harmless].) The evidence supports the jurisdictional finding that Catalina's developmental delays and cognitive deficiencies impair her ability to provide Barbara adequate care, supervision, and protection.

Reasonableness of Reunification Services

Catalina contends she did not receive reasonable reunification services because the department did not comply with the juvenile court's order to provide her parenting classes through Healthy Beginnings. Because she did not receive reasonable services,

she further contends, the juvenile court erred in terminating reunification services. We disagree.

At the 12-month review hearing, the juvenile court must determine whether the parent was provided reasonable reunification services. (§ 366.21, subd. (f).) The reasonableness of services finding implicates two aspects of the court-ordered services plan: the extent to which the services selected address the problems that necessitated the juvenile court's intervention and the extent to which the department made the services available and assisted the parent in accessing them. (*In re Ronell A.* (1996) 44 Cal.App.4th 1352, 1362.)

In this case, parenting classes through Healthy Beginnings was incorporated into a revised services plan that was ordered into effect in October 2014. The specifics of the parenting classes, including the fact that they would begin in January 2015, were detailed in the revised plan. No one, including Catalina's attorney, raised any concern that the parenting classes would begin in the same month that the 12-month review hearing was scheduled or that Catalina would not be able to utilize them if her reunification services were terminated. By failing to challenge the timing of the classes, Catalina accepted the Healthy Beginnings classes as a reasonable requirement and forfeited any claim that the services were unreasonable. (*In re Julie M.* (1999) 69 Cal.App.4th 41, 46-47.)

Even if, however, Catalina had not forfeited her challenge to the reasonableness of her services, we would nevertheless uphold the juvenile court's reasonableness of services finding. According to the testimony, the Healthy Beginnings parenting classes were by their nature a continuation of the parenting classes Catalina received through the First Parents Program. By the 12-month review hearing, Catalina had completed the First Parents Program, yet was still unable to attend to Barbara's basic needs. Consequently, the inability to participate in Health Beginnings did not deprive her of a necessary component of her services plan.

Having properly found that Catalina was provided reasonable services, the juvenile court had no choice but to terminate them and set a section 366.26 hearing. (§ 366.21, subd. (g)(4).)

We find no error on this record.

DISPOSITION

The petition for extraordinary writ is denied. This opinion is final forthwith as to this court.